

Telecommunications Adjudication Scheme for Local Loop Unbundling

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Annex 1:

Telecommunications Adjudication Scheme for Local Loop Unbundling

Scheme Agreement

To the Adjudicator

Telecommunications Adjudication Scheme

1. **This Agreement (the "Scheme Agreement") to the Telecommunications Adjudication Scheme** is made the day of 2004 between British Telecommunications plc ("BT") and (the "Operator") (together the "Parties").

2. **Whereas** the Parties
 - 2.1 Wish to join the Telecommunications Adjudication Scheme ("Adjudication Scheme") which is described in the "Ofcom Terms of Reference for the Telecommunications Adjudicator" (the "Terms of reference") (Annex 5)
 - 2.2 Approve and adopt the following Rules ("the Rules") in relation to the Adjudication Scheme:
 - 2.2.1 the Adjudicator Appointment Rules (Annex 2)
 - 2.2.2 the Facilitation Rules (Annex 3)
 - 2.2.3 the Dispute Resolution Rules (Annex 4)

as amended from time to time by agreement by all members of the Adjudication Scheme.

3. **The Parties hereby agree that**, in consideration of the Adjudicator and each member of the Adjudication Scheme mutually agreeing to be bound by the Rules, the Parties will:
 - 3.1 accept and adopt the Rules; and
 - 3.2 abide by the Rules;

until such time as the Operator or BT withdraws from the Adjudication Scheme or the Adjudication Scheme is terminated in which case the dispute resolution rules shall revert back to those of the Access Network Facilities Service Agreement ("the ANF Agreement").
4. Notwithstanding the provisions of the ANF Agreement between BT and the Operator which restricts the circumstances in which contractual terms may be varied or amended, all of the provisions in this Agreement shall have effect.
5. Notwithstanding the provisions of the ANF Agreement between BT and the Operator concerning the resolution of disputes, all of the provisions in this Agreement shall have effect and shall take precedence over relevant provisions in the ANF Agreement to the extent necessary to give effect to the terms of this Scheme Agreement.
6. Any obligation incurred under a Ruling or Adjudication prior to the withdrawal by a Party from the Adjudication Scheme or the termination of the Adjudication Scheme will continue to apply to such Party.
7. By signing this Scheme Agreement, a Party that has not yet entered the ANF Agreement with BT confirms that the Dispute Resolution Rules do not apply and also confirms their intent to sign such an agreement and both Parties agree that this Scheme Agreement will apply immediately upon the signing of such an Agreement at which time the Dispute Resolution Rules will apply.
8. This Scheme Agreement shall terminate on whichever is the earlier of:
 - 8.1 the date on which either party gives notice to the other Party, to the Adjudicator and to Ofcom (such notice being capable of being given between 31 January 2005 and 28 February 2005, both dates inclusive) to withdraw from the Adjudication Scheme;
 - 8.2 the expiration of six months notice given by either Party to the other Party, to the Adjudicator and to Ofcom at any time after 28 February 2005 or such shorter notice period as may be agreed by the Adjudicator and Ofcom;

- 8.3 the expiration of one months notice given by either Party to the other Party, to the Adjudicator and to Ofcom within one month following any change to the Rules or the Terms of Reference;
 - 8.4 the date of termination of the Adjudication Scheme, for whatever reason, by Ofcom;
 - 8.5 31 January 2006 unless extended by agreement of the Parties;
 - 8.6 1 February 2005, if at such date the Operator has not entered into an ANF Agreement and the Operator has not been given written permission by the Adjudicator to continue within the Adjudication Scheme; or
 - 8.7 on the expiry of a 12 month period from the signing of this Scheme Agreement, if at such expiry the Operator has not entered into an ANF Agreement with BT.
9. This Scheme Agreement will be governed under the Law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

Signed

British Telecommunications plc

[Operator]

Annex 2:

Telecommunications Adjudication Scheme for Local Loop Unbundling

Adjudicator Appointment Rules

1. Selection for Appointment

- 1.1 The Adjudicator shall be an individual appointed from time to time by Ofcom alone:
 - 1.1.1 after consultation by Ofcom with British Telecommunications plc ("BT") and other Communications Providers ("Operators") as regards selection criteria and nominations;
 - 1.1.2 and after selection as having the necessary and appropriate experience, knowledge and skills to act as Adjudicator in accordance with the Facilitation Rules and Dispute Resolution Rules;
 - 1.1.3 to hold office as an independent Telecommunications Adjudicator independent of Ofcom, BT and Operators on terms Ofcom considers appropriate; and
 - 1.1.4 to operate the Telecommunications Adjudication Scheme (the "Adjudication Scheme").

2. Required Terms of Appointment

- 2.1 The terms of office of the Adjudicator shall include terms as to:
 - 2.1.1 when the Adjudicator should assume office, and when the Adjudicator might cease to hold office, including upon the Adjudication Scheme being discontinued;
 - 2.1.2 remuneration and other benefits;
 - 2.1.3 consultation with an advisory panel and with an industry user group;
 - 2.1.4 administrative support;
 - 2.1.5 the taking of independent legal or other advice when necessary or appropriate;
 - 2.1.6 accommodation within Ofcom's premises or elsewhere;

- 2.1.7 process for disclosing any conflict of interest;
 - 2.1.8 reimbursement of proper and reasonable disbursements and expenses;
and
 - 2.1.9 any other relevant matter.
- 2.2 The Adjudicator will be appointed to office by Ofcom under a suitable contract for services.
- 2.3 The contract for services will set out the responsibilities and functions of the Adjudicator under the Adjudication Scheme and shall include provision in particular that the Adjudicator:
- 2.3.1 shall submit periodic reports to Ofcom and the Parties;
 - 2.3.2 shall not be employed by or act as consultant or contractor to Ofcom, BT or any other Communications Provider while holding office as Adjudicator;
 - 2.3.3 shall not have any direct financial interest in BT or any other Communications Provider while holding office as Adjudicator;
 - 2.3.4 shall immediately declare any direct or indirect financial or other interest the Adjudicator knows he has in any facilitation under the Facilitation Rules or dispute resolution under the Dispute Resolution Rules;
 - 2.3.5 in respect of any information imparted to the Adjudicator in confidence by Ofcom or by any Party to a dispute, shall keep that information confidential so long as it remains confidential, even after ceasing to hold office as Adjudicator;
 - 2.3.6 within the period of at least six months immediately after ceasing for any reason to hold office as Adjudicator shall not be employed by or act as consultant or contractor to any Communications Provider without Ofcom's prior written consent;
 - 2.3.7 that the contract for services can be terminated by Ofcom in a number of specified circumstances; and
 - 2.3.8 carry out his duties as Adjudicator in accordance with the Terms of Reference the Facilitation Rules and the Dispute Resolution Rules.

3. Costs

- 3.1 The costs incurred in relation to the Adjudicator shall be the subject of a budget which is set or amended from time to time by Ofcom after consultation with BT.

- 3.2 The costs will be paid for by Ofcom. Ofcom will reclaim 50% of the cost of the Adjudicator from BT.
- 3.3 The budget arrangements will be reviewed at the First Review.

Annex 3:

Telecommunications Adjudication Scheme for Local Loop Unbundling

Facilitation Rules

1. The objective of the facilitation role is to create and maintain an environment in which Communication Providers ("Operators") and British Telecommunications plc ("BT") who have entered into the Telecommunications Adjudication Scheme ("Adjudication Scheme") quickly reach substantial agreement on how new and enhanced telecommunications products / processes for Local Loop Unbundling are to be delivered, thereby accelerating implementation and reducing the occurrence of disputes.
2. Operators and BT that enter into the Scheme Agreement are referred to as the "Parties".
3. To ensure the success of facilitation will require both the Adjudicator and Parties to work effectively together. The respective roles and responsibilities for the Adjudicator and for the Parties are outlined below.
4. The roles and responsibilities of the Adjudicator will be:
 - 4.1 working with the Parties to agree the working approaches between the Parties including the role of different groups, the membership and empowerment of different groups and reporting between Parties;
 - 4.2 facilitating working groups;
 - 4.3 facilitating the sharing of information between Parties;
 - 4.4 maintaining close dialogue with each of the Parties to understand their individual concerns, constraints, capabilities and issues;
 - 4.5 working with Operators to understand and prioritise their demands and requirements and presenting consensus (if possible) of their requirements to BT;
 - 4.6 if necessary, setting the priorities of Operators to present to BT;
 - 4.7 helping the Parties to agree appropriate product / process definitions and specifications;
 - 4.8 helping the Parties to resolve potential disagreements between themselves rapidly prior to a dispute as defined by the Dispute Resolution Rules;

- 4.9 where agreement on matters within the scope of these Facilitation Rules is not forthcoming between Parties, rapidly making clear non-binding recommendations based on his judgement and available evidence;
 - 4.10 monitoring implementation of non binding recommendations and compliance with Rulings and Adjudications of the Adjudicator
5. In making recommendations, the Adjudicator shall work on the basis of the Principles set out for making such decisions (and as set out and amended from time to time) in the Terms of Reference (Section 4).
 6. The roles and responsibilities of the Parties will be (and as set out and amended from time to time) in the Terms of Reference (Section 12).
 7. Any recommendations resulting from the Facilitation Rules are non-binding on the Parties.

Annex 4:

Telecommunications Adjudication Scheme for Local Loop Unbundling

Dispute Resolution Rules

1 Scope

- 1.1 An Adjudicator duly appointed under the Telecommunications Adjudication Scheme ("Scheme") shall resolve disputes in accordance with these Dispute Resolution Rules ("Rules") when:
 - 1.1.1 the Parties to the Dispute are appropriately qualified as specified in Rule 2.1 below; and
 - 1.1.2 the Dispute is one specified in Rule 3.2 and subject to Rule 3.3 below.
- 1.2 In these Rules:
 - 1.2.1 any reference to "the Act" is a reference to the Communications Act 2003 as it may be amended or re-enacted from time to time.
 - 1.2.2 LLU means Local Loop Unbundling
 - 1.2.3 LLU Operators ("LLUOs") is a reference to Communication Providers who are customers for LLU services;
 - 1.2.4 BT means British Telecommunications plc;
 - 1.2.5 any reference to a "Dispute" is a reference to a Dispute under the Dispute Resolution Rules and which is not an excluded dispute under the Dispute Resolution Rules;
 - 1.2.6 any reference to an "ANF Agreement" is a reference to the Agreement for Access Network Facilities Services which governs the provision of unbundled loops and associated facilities;
 - 1.2.7 any reference to "Parties" is a reference to Operators and BT, who sign the Scheme Agreement; and
 - 1.2.8 any reference to "Scheme Agreement" is a reference to the Telecommunications Adjudication Scheme Agreement made between BT and each Operator individually which sets up the Scheme.

- 1.3 For the avoidance of doubt, nothing in these Rules:
 - 1.3.1 shall take effect if and to the extent that it conflicts with any provision within sections 185 to 192 of the Act;
 - 1.3.2 shall prevent any Party to a Dispute relying upon or exercising any contractual or other right or remedy it may have, including but not limited to challenging by due legal process the resolution of the Dispute under the Scheme.

2 Parties

- 2.1 A Dispute may only be resolved under the Scheme if each Party to the Dispute satisfies each of the following Rules 2.2 and 2.3.
- 2.2 Each Party to the Dispute must be a Communications Provider as defined in section 405(1) of the Act.
- 2.3 Each Party to the Dispute must have entered into:
 - 2.3.1 a Scheme Agreement with another Party to the Dispute which includes a provision to the effect that these Rules shall apply to the resolution of the Dispute; and
 - 2.3.2 an ANF Agreement.

3 Disputes

- 3.1 The Adjudicator may accept a Dispute from more than two Parties. The Adjudicator may join different Disputes but only with the agreement of all the relevant Parties.
- 3.2 The disputes to be resolved under the Scheme are those concerning LLU within Rules 3.2.1 to 3.2.7 below or a particular dispute as described in Rule 3.2.8 below:
 - 3.2.1 Product functionality which refers to the definition, specification (including timing of availability) and functionality of LLU products, and associated facilities and activities necessary for LLU such as co-location and tie-cables. It will include inter-alia issues such as:
 - 3.2.1.1 Scope of an unbundled loop (e.g. issues such as the product definition of shared and fully unbundled loops, interpretation of the Access Network Frequency Plan);

- 3.2.1.2 Location and type of unbundling (e.g. issues such as sub-loop unbundling);
 - 3.2.1.3 Approach to achieve unbundling (e.g. prequalification, line-testing, jumpering, product compatibility, quality management);
 - 3.2.1.4 Associated facilities required to support unbundling and the specification of these (e.g. co-location, distant co-location, co-mingling and tie cables); and
 - 3.2.1.5 Operational activities associated with in-life service management (e.g. site access requirements, testing approach and how faults are managed).
- 3.2.2 Process specification which refers to the specification and availability of the processes involved through the life-cycle of relevant LLU products. It will include inter-alia processes such as:
- 3.2.2.1 Forecasting and demand management;
 - 3.2.2.2 Pre-ordering (for example, pre-qualification, line testing and address matching);
 - 3.2.2.3 Ordering;
 - 3.2.2.4 Provisioning, including but not limited to new provisions, co-ordinated provisioning (for example, LLU with WLR (wholesale line rental)), transfer (for example, from PSTN (Public Switched Telephone Network)) to fully unbundled MPFs (Metallic Path Facilities)), number portability, change of end user customer name and broadband migrations;
 - 3.2.2.5 Fault reporting and repair; and
 - 3.2.2.6 Billing.
- 3.2.3 Process specification which will also include the setting of reasonable quality levels, Service Level Agreements ("SLAs") and Service Level Guarantees ("SLGs") (and penalties / liquidated damages in these).
- 3.2.4 Change management which refers to on-going modifications, enhancements and improvements of LLU products and processes as outlined in Rules 3.2.1 to 3.2.3.
- 3.2.5 Implementation plans which refers to the implementation of new and changed LLU products and processes (as outlined in Rules 3.2.1 to 3.2.4), including the project plans, timescales and reasonable resourcing required to delivery these products and processes.

- 3.2.6 Monitoring activities which refers to necessary on-going activities to monitor implementation of non binding recommendations and compliance with Rulings and Adjudications of the Adjudicator, including the use of appropriate Key Performance Indicators ("KPIs") where relevant.
 - 3.2.7 For the avoidance of doubt, charge setting and policy development will not be included in the Scope of the Adjudicator, but will remain matters for Ofcom.
 - 3.2.8 a particular dispute designated in a written agreement between the Parties for resolution under the Scheme.
- 3.3 Notwithstanding the provisions of Rule 3.2 above, a Dispute shall cease to qualify for resolution under the Scheme if at any time the Adjudicator determines that the Dispute:
- 3.3.1 is an "excluded dispute" within the meaning of section 185(7) of the Act; or
 - 3.3.2 is trivial (in the opinion of the Adjudicator unless all Parties to such dispute advise the Adjudicator otherwise);
 - 3.3.3 having been submitted by Ofcom for an Adjudication under Rule 5.1 below, it should for any other reason be referred back to Ofcom for determination by Ofcom; or
 - 3.3.4 is a dispute where resolution of such dispute would probably result in one or more of the following:
 - 3.3.4.1 conflict with existing Ofcom regulatory policy;
 - 3.3.4.2 establishing new regulatory policy;
 - 3.3.4.3 setting of LLU charges;
 - 3.3.4.4 excessive additional expenditure by Operators and / or BT in relation to the potential benefits;
 - 3.3.4.5 a significant detrimental impact on network security or network integrity; or
 - 3.3.4.6 a significant detrimental operational disruption, dislocation or re-engineering of operational systems or processes.
- 3.4 The Adjudicator shall promptly give written reasons for any such determination to each Party and to Ofcom.
- 3.5 Ofcom will not request the Adjudicator to resolve a matter that is not a Dispute.

4 Ruling

- 4.1 At any time before any Dispute has been referred to Ofcom under section 185 of the Act, any Party to a Dispute may in writing submit that Dispute to the Adjudicator for resolution by way of Ruling.
- 4.2 The Ruling shall be made in accordance with the principles set out in Rule 6 below and the procedure set out in Rule 7 below.
- 4.3 Save for Rule 4.4, the Ruling shall be binding unless and until superseded by:
 - 4.3.1 an Adjudication under Rule 5 below; or
 - 4.3.2 a contrary determination or direction by Ofcom; or
 - 4.3.3 an order of a Court of competent jurisdiction
- 4.4 The Ruling shall not be binding if the Adjudicator has made a manifest error on the face of his finding.

5 Adjudication

- 5.1 At any time after any Dispute has been referred to Ofcom under section 185 of the Act, Ofcom may in writing submit that dispute to the Adjudicator for resolution by way of an Adjudication.
- 5.2 A Dispute submitted by Ofcom to the Adjudicator shall revert back to Ofcom for determination:
 - 5.2.1 upon the Adjudicator so determining under Rule 3.3.3 above;
 - 5.2.2 on the prompt written application of any Party if the Adjudicator has failed within 4 months of the submission to make an Adjudication; or
 - 5.2.3 on the prompt written application of any Party dissatisfied with the Adjudication.
- 5.3 The Adjudication shall be made in accordance with the principles set out in Rule 6 below and the procedure set out in Rule 7 below.
- 5.4 Save for Rule 4.5, the Adjudication shall be binding unless and until superseded by:
 - 5.4.1 a contrary determination or direction by Ofcom; or
 - 5.4.2 an order of a Court of competent jurisdiction

- 5.5 The Adjudication shall not be binding if the Adjudicator has made a manifest error on the face of his finding.

6 Principles

- 6.1 The Adjudicator shall act as expert and not as arbitrator or mediator.
- 6.2 The Adjudicator shall endeavour to resolve the Dispute as rapidly as is practicable.
- 6.3 The Adjudicator shall as a matter of general principle have regard to the need to give independent, objective and fair consideration to the submissions and evidence of each Party in accordance with the principles of natural justice.
- 6.4 In making any Ruling or Adjudication, the Adjudicator shall as far as is reasonably practicable have particular regard to:
- 6.4.1 The objective for the Adjudicator which is to help ensure the rapid delivery of products and processes which:
 - 6.4.1.1 are, and remain, equivalent in terms of outcome to that which BT delivers to itself, so that the products and processes allow LLUOs to compete on a level playing field with BT in downstream markets based on LLU products;
 - 6.4.1.2 are, and remain, fit for purpose and appropriately industrialised; and
 - 6.4.1.3 support broad take-up of LLU (including shared and fully unbundled loops).
 - 6.4.2 In relation to Rule 6.4.1.1, equivalence in terms of outcome may be achieved by having other Operators use the same or similar types of products, systems and processes as are used by BT, or such other types of products, systems and processes as are appropriate to satisfy the objective; and
 - 6.4.3 Where relevant take account of, inter alia:
 - 6.4.3.1 reasonable resource constraints (including training requirements) of Operators and BT and the ability of Operators and BT to increase resources, although the Adjudicator is able to require reasonable increases in resources;
 - 6.4.3.2 efficiently incurred and reasonable costs, and the need to avoid wasteful expenditure by Operators and BT;
 - 6.4.3.3 likely future demand levels and forecasts;

- 6.4.3.4 reasonable cost recovery and reasonable profit;
 - 6.4.3.5 the policy context as set by Ofcom/Oftel and regulatory rules (including any relevant Ofcom/Oftel guidelines) in relation to LLU and other relevant products and such policy / regulatory rules as are amended from time to time;
 - 6.4.3.6 existing product / processes;
 - 6.4.3.7 existing customers;
 - 6.4.3.8 network security and network integrity;
 - 6.4.3.9 the activities and recommendations of other related groups such as the NICC and Billing Industry Forum;
 - 6.4.3.10 where relevant, Ofcom's statutory duties; and
 - 6.4.3.11 the impact of any decision on other LLUOs, Operators and BT as well as on the Parties to the Dispute.
- 6.5 The Adjudicator may also consult other LLUOs, Operators and BT as he sees fit and may as appropriate take account of their views.

7 Procedure

- 7.1 The Adjudicator may publish and from time to time revise Guidance on the approach to be adopted by the Adjudicator, the required form of submission of a Dispute to the Adjudicator, what is required of Parties to a Dispute, and any other appropriate matter.
- 7.2 The Adjudicator may adopt such procedures as the Adjudicator considers necessary or appropriate for rapid resolution of a Dispute, including but not limited to, requiring within a short timescale from any Party to the Dispute in relation to:
- 7.2.1 a formal submission of the Dispute to the Adjudicator;
 - 7.2.2 written arguments, written answers to questions, and verification of information;
 - 7.2.3 disclosure of documents or other information (subject to claim to privilege or confidence although Parties agree that they will not unreasonably withhold information);
 - 7.2.4 attendance to give oral submissions by appropriate executives or staff having relevant knowledge or requisite authority to make decisions binding that Party;
 - 7.2.5 co-operation in any other reasonable respect.

- 7.3 An Adjudicator may take up and continue resolving a Dispute submitted to the predecessor of the Adjudicator.
- 7.4 The Adjudicator shall not be inhibited from resolving a Dispute:
- 7.4.1 by having performed any facilitative role in relation to the subject matter of the particular or of any related or other Dispute;
 - 7.4.2 by having made a determination or Ruling in relation to the subject matter of the particular or of any related or other Dispute.
- 7.5 Neither a Ruling nor an Adjudication shall be invalidated by the Adjudicator subsequently ceasing to hold office.
- 7.6 The Adjudicator shall promptly give written reasons for any Ruling or Adjudication to each Party and to Ofcom. However, the Adjudicator shall not include in his reasons any information which has been supplied to him in confidence.
- 7.7 Parties shall bear their own costs in Disputes.
- 7.8 In the case where a Party to a Dispute that is being resolved under the Dispute Resolution Rules terminates their Scheme Agreement (at the end of the required notice period) before any Ruling or Adjudication is made in relation to such Dispute, the Adjudicator will immediately discontinue handling such Dispute and shall leave the matter unresolved save in the case where there were more than two Parties to such dispute and a dispute between Parties to the Scheme Agreement still exists in which case the Adjudicator will continue to handle the Dispute in relation to those Parties remaining in the Scheme.

8 Sanctions

- 8.1 If any Party defaults by refusing or failing to abide by any procedure or timescale adopted by the Adjudicator then the Adjudicator may resolve the dispute on the material available and draw such inferences as the Adjudicator thinks fit in relation to such failure to co-operate.
- 8.2 Any Party may seek the assistance of the Court to enforce any decision of the Adjudicator including but not limited to a Ruling or an Adjudication.
- 8.3 For the avoidance of doubt, nothing in these Rules is intended to inhibit:
- 8.3.1 enforcement of any sanction provided by contract binding the defaulting Party;
 - 8.3.2 the powers of any Court of competent jurisdiction.

9 Immunity

- 9.1 Neither the Adjudicator nor any member of the Adjudicator's advisory panel or administrative staff (as described in the Adjudicator Appointment Rules) shall be liable to any party to a dispute in damages or otherwise for any act or omission unless the act or omission was in bad faith or outside the functions of the Adjudicator.

10 Law

- 10.1 These Rules will be governed under the Law of England and Wales and the Parties submit to the exclusive jurisdiction of the English courts.

Telecommunications Adjudication Scheme for Local Loop Unbundling

Ofcom Terms of Reference for the Telecommunications Adjudication Scheme for Local Loop Unbundling

1. Background

- 1.1 Ofcom recognises that operational effectiveness is critical to the success of Local Loop Unbundling ("LLU"). Ofcom is, therefore, creating a Telecommunications Adjudication Scheme (the "Adjudication Scheme") and intends to appoint a Telecommunications Adjudicator (the "Adjudicator") to help to accelerate the implementation and delivery of fit for purpose and appropriately industrialised products and processes for delivering LLU.
- 1.2 These terms of reference ("Terms of Reference") summarise:
 - 1.2.1 the implementation of the Adjudication Scheme;
 - 1.2.2 the scope of the Adjudication Scheme;
 - 1.2.3 the role of the Adjudicator;
 - 1.2.4 the constitution of the Adjudicator; and
 - 1.2.5 other issues such as selection, information gathering, reporting, commitment, existing arrangements and termination.
- 1.3 These Terms of Reference are intended to provide an overview of how the Adjudication Scheme will operate, the role of Ofcom and the nature of the role of the Adjudicator. The Scheme Agreement, Adjudicator Appointment Rules, Facilitation Rules and Dispute Resolution Rules shall take precedence in case of any inconsistency with these Terms of Reference.
- 1.4 In these Terms of Reference:
 - 1.4.1 any reference to "the Act" is a reference to the Communications Act 2003 as it may be amended or re-enacted from time to time;
 - 1.4.2 Local Loop Unbundling Operators ("LLUOs") is a reference to Communication Providers who are customers for LLU services;
 - 1.4.3 any reference to an "ANF Agreement" is a reference to the Agreement for Access Network Facilities Services which governs the provision of unbundled loops and associated facilities;

- 1.4.4 any reference to a "Dispute" is a reference to a Dispute under the Dispute Resolution Rules and which is not an excluded dispute under the Dispute Resolution Rules; and
- 1.4.5 unless the context otherwise requires, the singular shall include the plural and vice versa and any words importing the masculine gender shall include the feminine also.

2. Implementation

- 2.1 The Adjudication Scheme will be set up by means of the Telecommunications Adjudication Scheme Agreement ("Scheme Agreement") which Communication Providers (the "Operators") and British Telecommunications plc ("BT") may voluntarily enter into. The roles of the Scheme Agreement and the ANF Agreement are described in paragraphs 2.2 to 2.3.
- 2.2 By signing the Scheme Agreement, Operators and BT agree to operate according to the Adjudication Scheme and to put the Adjudication Scheme into effect by accepting that the Adjudication Scheme will take precedence over relevant provisions in the ANF Agreement. The Scheme Agreement will be made between BT and each Operator individually. Operators and BT, who sign the Scheme Agreement are referred to as the "Parties". The Scheme Agreement is provided in Annex 1.
- 2.3 The Adjudication Scheme will include three sets of rules (together the "Rules") which will govern the role and powers of the Telecommunications Adjudicator. These are:
 - 2.3.1 the Adjudicator Appointment Rules (Annex 2) which govern the appointment of the Adjudicator and the terms on which he serves;
 - 2.3.2 the Facilitation Rules (Annex 3) which govern the Adjudicator's facilitative role; and
 - 2.3.3 the Dispute Resolution Rules (Annex 4) which govern the Adjudicator's dispute resolution role.
- 2.4 Operators who have not signed an ANF Agreement with BT will be able to participate in the Adjudication Scheme:
 - 2.4.1 up to 31 January 2005, provided that they intend to sign an ANF Agreement in future, or alternatively at the sole discretion of the Adjudicator;
 - 2.4.2 after 31 January 2005, only at the sole discretion of the Adjudicator and in any case for not more than 12 months after having entered the Adjudication Scheme.

- 2.5 Operators participating in the Adjudication Scheme at any time who have not signed an ANF Agreement with BT shall only be able to participate in the facilitation activities and shall not bring any disputes to the Adjudicator.
- 2.6 The participation of any Operator in the Adjudication Scheme before signing an ANF Agreement with BT will not affect any of the ANF Agreement service establishment criteria and procedures.

3. Scope of the Adjudicator

3.1 The Adjudicator will in the exercise of:

- 3.1.1 facilitation, assist BT and Operators to reach agreement on and, where necessary, make recommendations on; and
- 3.1.2 if necessary, dispute resolution, set

appropriate product functionality, process specifications, change management, implementation plans and monitoring activities for LLU to rapidly deliver fit for purpose and appropriately industrialised products and processes. These will relate to improvements to existing and / or new products / processes. The Scope of the Adjudicator (the "Scope") will include a role in setting specifications and plans. The extent of that role is set out in Paragraphs 3.2 to 3.8 below.

3.2 Product functionality which refers to the definition, specification (including timing of availability) and functionality of LLU products, and associated facilities and activities necessary for LLU such as co-location and tie-cables and, in relation to facilitation only, LLU backhaul. It will include inter-alia issues such as:

- 3.2.1 Scope of an unbundled loop (e.g. issues such as the product definition of shared and fully unbundled loops, interpretation of the Access Network Frequency Plan);
- 3.2.2 Location and type of unbundling (e.g. issues such as sub-loop unbundling);
- 3.2.3 Approach to achieve unbundling (e.g. prequalification, line-testing, jumpering, product compatibility, quality management);
- 3.2.4 Associated facilities required to support unbundling and the specification of these (e.g. co-location, distant co-location, co-mingling, tie cables and, in relation to facilitation only, LLU backhaul); and
- 3.2.5 Operational activities associated with in-life service management (e.g. site access requirements, testing approach and how faults are managed).

- 3.3 Process specification which refers to the specification and availability of the processes involved through the life-cycle of relevant LLU products. It will include inter-alia processes such as:
 - 3.3.1 Forecasting and demand management;
 - 3.3.2 Pre-ordering (for example, pre-qualification, line testing and address matching);
 - 3.3.3 Ordering;
 - 3.3.4 Provisioning, including but not limited to new provisions, co-ordinated provisioning (for example, LLU with WLR (wholesale line rental)), transfer (for example, from PSTN (Public Switched Telephone Network)) to fully unbundled MPFs (Metallic Path Facilities)), number portability, change of end user customer name and broadband migrations;
 - 3.3.5 Fault reporting and repair; and
 - 3.3.6 Billing.
- 3.4 Process specification which will also include:
 - 3.4.1 facilitating the agreement of reasonable quality levels, Service Level Agreements ("SLAs") and Service Level Guarantees ("SLGs") (and penalties / liquidated damages in these) and, if necessary making recommendations; and
 - 3.4.2 in dispute resolution only, the setting of reasonable quality levels, SLAs and SLGs (and penalties / liquidated damages in these).
- 3.5 Change management which refers to on-going modifications, enhancements and improvements of LLU products and processes as outlined in Paragraphs 3.2 to 3.4.
- 3.6 Implementation plans which refers to the implementation of new and changed LLU products and processes (as outlined in Paragraphs 3.2 to 3.5), including the project plans, timescales and reasonable resourcing required to delivery these products and processes.
- 3.7 Monitoring activities which refers to necessary on-going activities to monitor implementation of non binding recommendations and compliance with Rulings and Adjudications of the Adjudicator, including the use of appropriate Key Performance Indicators ("KPIs") where relevant.
- 3.8 For the avoidance of doubt, charge setting and policy development will not be included in the Scope of the Adjudicator, but will remain matters for Ofcom.

- 3.9 Where a change in the product or processes necessitates a change in LLU charges which have previously been set by Ofcom, Ofcom may, if Ofcom deems it appropriate, rapidly propose, consult on and set revised charges.

4. Overall Role of the Adjudicator

- 4.1 The Adjudicator has two roles, facilitation and resolution of Disputes under the Adjudication Scheme. These two roles are described below in sections 5 and 6 respectively.
- 4.2 In making recommendations, Rulings and Adjudications on issues within the Scope the Adjudicator will work on the basis of the principles (the "Principles") as outlined in paragraphs 4.3 to 4.5.
- 4.3 The objective for the Adjudicator is to help ensure the rapid delivery of products and processes which:
- 4.3.1 are, and remain, equivalent in terms of outcome to that which BT delivers to itself, so that the products and processes allow LLUOs to compete on a level playing field with BT in downstream markets based on LLU products;
 - 4.3.2 are, and remain, fit for purpose and appropriately industrialised; and
 - 4.3.3 support broad take-up of LLU (including shared and fully unbundled loops).
- 4.4 In relation to paragraph 4.3.1, equivalence in terms of outcome may be achieved by having other Operators use the same or similar types of products, systems and processes as are used by BT, or such other types of products, systems and processes as are appropriate to satisfy the objective.
- 4.5 The Adjudicator, whether acting as a facilitator or acting as an independent expert in making a Ruling or Adjudication shall where relevant take account of, inter alia:
- 4.5.1 reasonable resource constraints (including training requirements) of Operators and BT and the ability of Operators and BT to increase resources, although the Adjudicator is able to recommend (in facilitation) or require (in Rulings and Adjudications) reasonable increases in resources;
 - 4.5.2 efficiently incurred and reasonable costs, and the need to avoid wasteful expenditure by Operators and BT;
 - 4.5.3 likely future demand levels and forecasts;

- 4.5.4 reasonable cost recovery and reasonable profit;
 - 4.5.5 the policy context as set by Ofcom/Oftel and regulatory rules (including any relevant Ofcom/Oftel guidelines) in relation to LLU and other relevant products and such policy / regulatory rules as are amended from time to time;
 - 4.5.6 existing product / processes;
 - 4.5.7 existing customers;
 - 4.5.8 network security and network integrity;
 - 4.5.9 the activities and recommendations of other related groups such as the NICC and Billing Industry Forum;
 - 4.5.10 where relevant, Ofcom's statutory duties; and
 - 4.5.11 the impact of any decision on other LLUOs, Operators and BT as well as on the Parties to the Dispute.
- 4.6 The Adjudicator may also consult other LLUOs, Operators and BT as he sees fit and may as appropriate take account of their views.
- 4.7 The Adjudicator will act in a decisive yet fair, objective and reasonable manner, in accordance with the principles of natural justice, to deliver prompt and satisfactory resolution of any Dispute under the Dispute Resolution Rules.

5. Facilitation Role

- 5.1 The objective of the facilitation role is to create and maintain an environment in which the Parties may quickly reach substantial agreement on the specification of enhanced products / processes and how new and enhanced products / processes are to be implemented, thereby accelerating implementation and reducing the occurrence of disputes.
- 5.2 The rules for facilitation and the responsibilities and roles of various Parties and the Adjudicator are outlined in the Facilitation Rules (Annex 3).
- 5.3 Recommendations made in this role are not binding on the Parties, but by signing the Scheme Agreement the Parties are indicating their willingness to cooperate in facilitation in good faith and their commitment to attempt to resolve issues through facilitation rather than formal dispute resolution.

6. Dispute Resolution Role

- 6.1 The Dispute Resolution Rules (Annex 4) will afford Parties to a Dispute who have adopted the Adjudication Scheme, a rapid, fair and authoritative resolution of the Dispute, without necessarily having to bring it to Ofcom first under section 185 of the Act. Parties do not surrender the right to exercise any other legal rights or remedies (Dispute Resolution Rule 1.3).
- 6.2 By signing the Scheme Agreement, the Parties are indicating their willingness and intention to bring Disputes to the Adjudicator prior to bringing the matter to Ofcom, and their willingness to accept and comply with the Adjudicator's Rulings and Adjudications.
- 6.3 Parties to a dispute may all sign a specific agreement or may exchange letters agreeing that a particular dispute (that is an excluded dispute specified or referred to in Paragraph 6.6 or is otherwise not a Dispute) may be resolved by the Adjudicator. Dispute Resolution Rule 3.2.8 so provides.
- 6.4 The Adjudicator may accept a Dispute from more than two Parties. The Adjudicator may join different Disputes but only with the agreement of all the relevant Parties.
- 6.5 The disputes to be resolved under the Adjudication Scheme are specified in Dispute Resolution Rule 3.2 and are:
 - 6.5.1 those within the Scope (described in Paragraph 3.2 to 3.8) (except that product / process specification issues related to LLU backhaul will not be included in the dispute resolution activities); or
 - 6.5.2 a particular dispute as described in Paragraph 6.3.
- 6.6 Under Dispute Resolution Rule 3.3 the Adjudicator will decline to accept a dispute on the grounds that:
 - 6.6.1 It is a dispute which is excluded under section 185(7) of the Act; or
 - 6.6.2 it is trivial (in the opinion of the Adjudicator unless all Parties to a dispute advise the Adjudicator otherwise); or
 - 6.6.3 (in the case of a Dispute referred by Ofcom) there is reason to refer it back to Ofcom; or
 - 6.6.4 on the grounds specified in paragraph 6.10 below.

In the case of each such determination the Adjudicator must give written reasons. (Dispute Resolution Rule 3.4).

- 6.7 When a Party submits a Dispute to the Adjudicator without bringing the matter to Ofcom, the Adjudicator will resolve the Dispute by way of Ruling, which will be binding unless and until it is superseded by an Adjudication, or by a contrary determination or direction by Ofcom, or by a Court order. (Dispute Resolution Rule 4).
- 6.8 When a Dispute has already been submitted to Ofcom under section 185 of the Act, Ofcom itself has discretion to submit the Dispute to the Adjudicator to resolve it by way of Adjudication, in which case the Dispute would be referred back for resolution by Ofcom if the Adjudicator so determines, or on the application of a Party if the Adjudicator has failed to resolve the Dispute within 4 months or if a Party is dissatisfied with the Adjudication. (Dispute Resolution Rule 5).
- 6.9 The principles on which the Adjudicator is to resolve a Dispute are set out in Dispute Resolution Rule 6. The Adjudicator is required:
- 6.9.1 to act as expert and not as arbitrator or mediator;
 - 6.9.2 to endeavour to resolve the Dispute as rapidly as is practicable;
 - 6.9.3 to be independent, fair and objective and act in accordance with the principles of natural justice;
 - 6.9.4 to have regard to the aims set out in paragraphs 4.3 to 4.5 above;
- 6.10 The Adjudicator shall decline to accept any dispute if it is probable that any resolution of the dispute would be likely to result in one or more of the following (Dispute Resolution Rule 3.3.4):
- 6.10.1 conflict with existing Ofcom regulatory policy;
 - 6.10.2 establish new regulatory policy;
 - 6.10.3 set LLU charges;
 - 6.10.4 result in excessive additional expenditure by Operators and / or BT in relation to the benefits;
 - 6.10.5 result in a significant detrimental impact on network security or network integrity; or
 - 6.10.6 result in significant detrimental operational disruption, dislocation or re-engineering of operational systems or processes.
- 6.11 If during the course of a dispute resolution it becomes apparent that the dispute is a dispute to which the provisions of Paragraphs 6.6 or 6.10 apply then the Adjudicator shall decline to act any further in relation to such dispute (Dispute Resolution Rule 3.3.4).

- 6.12 The Adjudicator has discretion under Dispute Resolution Rule 7 to decide what procedures to adopt both as a general rule and in the circumstances of a particular Dispute. For example, the Adjudicator may:
- 6.12.1 set the Parties a short but reasonable time within which to comply with appropriate procedural directions so as to achieve the aim of rapid and fair resolution of a Dispute;
 - 6.12.2 subject to the provisions of paragraph 9.2, require co-operation in producing material for the Adjudicator; and
 - 6.12.4 publish guidance on what will be required.
- 6.13 His reasons for any Ruling or Adjudication shall be made available to the Parties when the Ruling or Adjudication is made. However, the Adjudicator shall not include in his reasons any information which has been supplied to him in confidence (Dispute Resolution Rule 7.6).
- 6.14 Subject to paragraph 9.2, if any Party defaults by refusing or failing to abide by any procedure or timescale reasonably adopted by the Adjudicator then the Adjudicator may resolve the dispute on the material available and draw such inferences as the Adjudicator thinks fit in relation to such failure to co-operate.
- 6.15 There remains scope for review or enforcement of any Ruling or Adjudication of the Adjudicator to the extent that would otherwise be available:
- 6.15.1 under contract. (Dispute Resolution Rule 8.3.1). Rulings and Adjudications shall be enforceable under the terms of the ANF Agreement or, where appropriate, in the courts;
 - 6.15.2 by Ofcom exercising its regulatory functions of its own initiative or on application by a Party. Such action by Ofcom may, for example, include initiating an own investigation or imposing a Direction under the relevant SMP condition;
 - 6.15.3 on application to a Court. (Dispute Resolution Rule 8.3.2). A Ruling or Adjudication by the Adjudicator can be appealed to the High Court on the grounds of a manifest error on the face of the findings;
 - 6.15.4 but not against the Adjudicator for damages unless for an act or omission in bad faith or outside the functions of the Adjudicator. (Dispute Resolution Rule 9);

- 6.16 The Adjudicator may publish and from time to time revise guidance on the required form of submission of a Dispute to the Adjudicator, what is required of Parties to a dispute (for example, demonstration of reasonable prior commercial negotiation and / or demonstration of the failure of facilitation, whether under the Facilitation Rules or otherwise), any necessary guidance on the Dispute Resolution Rules, and any other appropriate procedural matter (Dispute Resolution Rule 7.1).
- 6.17 Parties will bear their own costs in Disputes.
- 6.18 Without fettering its discretion, in the case where a dispute had been submitted to Ofcom under section 185, in considering whether to accept the dispute under section 186, Ofcom may begin with the presumption that if a dispute had not been discussed under the Facilitation Rules or submitted to the Adjudicator under the Dispute Resolution Rules or had not been subject to another form of dispute resolution between the Parties, then opportunities to resolve the dispute may not have been exhausted.
- 6.19 In the case Ofcom decides to resolve a Dispute itself or in the case where an Adjudication is referred back to Ofcom, Ofcom may, having regard to its statutory duty under section 188(2) of the Act and where appropriate to do so, take account of any relevant previous recommendation, Ruling or Adjudication by the Adjudicator in making its own Determination although Ofcom is not obliged to do so.
- 6.20 Ofcom will not request the Adjudicator to resolve a matter that is not a Dispute.

7. Constitution

- 7.1 The Adjudicator will be responsible for undertaking facilitation including making recommendations under the Facilitation Rules and in making Rulings and Adjudications under the Dispute Resolution Rules.
- 7.2 The Adjudicator will be independent of all Parties and of Ofcom and shall inter alia during the period of his office, have no direct interest in any Party and avoid conflict of interest. Additionally, within the period of at least six months immediately after ceasing for any reason to hold office as Adjudicator shall not be employed by or act as consultant or contractor to any Communications Provider without Ofcom's prior written consent. The obligations of the Adjudicator are described in the Adjudicator Appointment Rules.

- 7.3 The Adjudicator can choose to be supported by any or all of the following groups:
- 7.3.1 a panel of part time advisors;
 - 7.3.2 a staff of up to four people; and
 - 7.3.3 an Industry User Group comprising Operators and BT.
- 7.4 The panel may advise the Adjudicator, but not make recommendations Rulings or Adjudications. The purpose of the panel is to ensure that the Adjudicator has access to advice from people with a sufficiently wide-ranging set of skills and knowledge and understanding of the market and the views of interested stakeholders. Their role will be to provide impartial advice, not to promote the views of particular Parties. The Adjudicator will select the panel members following consultation with Ofcom.
- 7.5 Under paragraph 7.3.2, the Adjudicator will be able to appoint staff to support them in the execution of his functions, but not to exercise the Adjudicator's powers to make decisions. The staff will be selected by the Adjudicator.
- 7.6 The Adjudicator may also procure the services of third Parties such as lawyers or consultants in order to allow him to fulfil his functions.
- 7.7 The Adjudicator can work with the Industry User Group on relevant issues to help ensure that the Adjudicator understands and attends to the concerns of Operators and BT, so that Operators and BT maintain their commitment to the Adjudication Scheme, and that the Adjudication Scheme can be adapted, if necessary, to ensure its effectiveness. The assistance that the Industry User Group may provide includes but is not limited to:
- 7.7.1 consulting other Parties to understand their issues;
 - 7.7.2 reviewing the effectiveness of the Adjudication Scheme; and
 - 7.7.3 suggesting amendments to the Adjudication Scheme such as the Principles and Scope and the operation of the Adjudication Scheme;
- 7.8 The Industry User Group will consist of appropriate operational executives from the Parties with the appropriate expertise and decision-making power in order to maintain senior level commitment. The Industry User Group must include a representative from BT.
- 7.9 The Adjudicator may suggest to the Operators and BT that they might wish to establish other groups. This shall not prevent any Parties forming groups that they wish without the Scheme.

7.10 The Adjudicator will be appointed to office by Ofcom under a suitable contract for services. This contract will set out the responsibilities and functions of the Adjudicator under the Adjudication Scheme (including the matters set out in paragraph 7.2), with appropriate safeguards to protect the confidentiality of information acquired by the Adjudicator, and provision for Ofcom to terminate the Adjudicator's appointment to office in a number of specified circumstances.

7.11 The Adjudicator will be based at Ofcom's offices.

7.12 The costs of the Adjudicator will be paid for by Ofcom. Ofcom will reclaim 50% of the cost of the Adjudicator from BT. Ofcom will set the Adjudicator's budget having consulted BT. This arrangement will be reviewed in the First Review (as defined in Paragraph 13.2).

8. Selection

8.1 The Adjudicator will be selected for his expertise, knowledge and understanding of the relevant LLU product / process issues, as well as for his ability to act effectively as a facilitator and independent expert in dispute resolution.

8.2 Ofcom will consult the Parties (or other interested parties as Ofcom deems appropriate) on nominations and the selection criteria for the Adjudicator. The selection of the Adjudicator will be Ofcom's decision.

8.3 Ofcom may appoint a replacement or stand-in Adjudicator as necessary on the same basis as outlined in Paragraphs 8.1 to 8.2.

9. Information gathering

9.1 The Adjudicator will be able to request and obtain information from the Parties relevant for his consideration of the issues. This may be in the form of, inter alia, a formal written submission, disclosure of documents or attendance to give oral submissions.

9.2 Under the terms of the Adjudication Scheme, the Parties will provide such information as the Adjudicator reasonably requests in reasonable time but will not be obliged to provide information they regard as confidential or which is legally privileged. Parties agree that they will not unreasonably withhold information.

- 9.3 Subject to Paragraph 9.2, if any Party defaults by refusing or failing to abide by any procedure or timescale reasonably adopted by the Adjudicator then the Adjudicator may resolve the dispute on the material available and draw such inferences as the Adjudicator thinks fit in relation to such failure to co-operate.
- 9.4 The Adjudicator may request any Party to submit confidential information to the Adjudicator or to other Parties where the Adjudicator believes that it would help in facilitation or dispute resolution and would not unreasonably compromise the providing Party's competitive position. If any Party decides to decline such request, the Adjudicator may not draw adverse inference from such decision.
- 9.5 Ofcom will be able to provide relevant information in its possession to the Adjudicator, but will not disclose any information received by Ofcom in confidence without the prior written consent of the Party from which Ofcom received the information.
- 9.6 The Adjudicator will keep all confidential information received from any Party or Ofcom, confidential from any other Party and Ofcom.

10. Reporting

- 10.1 The Adjudicator will provide Ofcom with information, on a regular monthly basis, summarising the Adjudicator's activities and recommendations, Rulings and Adjudications including such information as the Adjudicator deems appropriate, subject to any constraints under which information had been provided to the Adjudicator. The Adjudicator will inform the relevant Party of its intention to do so.
- 10.2 The Adjudicator will publish information to Parties regarding his activities, recommendations, Rulings and Adjudications as appropriate.

11. Existing arrangements

- 11.1 By signing the Scheme Agreement, BT agrees to offer and other Parties agree to accept that the Adjudicator Appointment Rules, Facilitation Rules and Dispute Resolution Rules will take effect between BT and those Operators who enter into Scheme Agreements with BT.
- 11.2 The Scheme Agreement will have precedence for relevant Disputes to the Adjudication Scheme over the relevant provisions within the ANF Agreement to the extent necessary to give effect to the provisions of the Scheme Agreement.

- 11.3 All Parties to the Adjudicator Scheme Agreement are still required to comply with all relevant regulatory and competition law obligations. The Adjudication Scheme does not prejudice any other legal rights.

12. Roles and Responsibilities of the Parties

- 12.1 The success of the Adjudication Scheme will depend on senior commitment to the Principles and objectives of the Adjudication Scheme and to ensuring its effective operation.
- 12.2 To help ensure the success of the Adjudication Scheme, Parties will be expected to:
- 12.2.1 maintain appropriate senior management level involvement as reasonably required by the Adjudicator;
 - 12.2.2 provide appropriate access for the Adjudicator to empowered management as required;
 - 12.2.3 ensure that the Adjudication Scheme and the intent of the Adjudication Scheme is well understood and adopted by relevant staff;
 - 12.2.4 ensure that participants in various groups have the necessary level of skills, expertise and empowerment to take decisions;
 - 12.2.5 ensure that relevant staff are made available in a timely fashion;
 - 12.2.6 ensure continuity of staff involved where reasonably possible;
 - 12.2.7 provide full and relevant information (subject to confidentiality and legal privilege) in a timely fashion;
 - 12.2.8 take due care to verify the accuracy of information;
 - 12.2.9 act in a professional, responsive manner and use all reasonable commercial endeavours to help the Adjudicator meet his objectives in facilitation and dispute resolution; and
 - 12.2.10 formally announce their participation in and commitment to the Adjudication Scheme.

13. Term, Termination and Amendment

- 13.1 The Adjudication Scheme will begin on 5 July 2004.

- 13.2 Ofcom, in consultation with the Parties, will complete a first review ("First Review") of the Adjudication Scheme by 31 January 2005 as regards the effectiveness and the success of the Scheme. On the basis of this Ofcom will recommend the continuation, the amendment (to improve its effect) or the termination of the Scheme.
- 13.3 In the case that Ofcom recommends the termination of the Adjudication Scheme under Paragraph 13.2, the Adjudication Scheme shall terminate on 31 January 2005.
- 13.4 Following the publication by Ofcom of the First Review recommendation (and to the extent that the Scheme has not been terminated), any Party to any Scheme Agreements will have the option (within one month of the date of such publication and by giving written notice to the Adjudicator, to Ofcom and to the Operator / BT with which it had signed the Scheme Agreement) to agree to the amended Adjudication Scheme or to opt-out of the Adjudication Scheme with immediate effect.
- 13.5 Subsequent to the First Review and if the First Review recommendation is to continue with the Adjudication Scheme the Adjudication Scheme will run for a further twelve months to 31 January 2006. Any extension beyond this date will require the mutual agreement of all the Parties.
- 13.6 Without prejudice to paragraph 13.4, after 31 January 2005 any Party to any Scheme Agreement will be able to terminate their participation in the Adjudication Scheme by providing six months (unless a shorter period is otherwise agreed by Ofcom and by the Adjudicator) notice in writing to the Adjudicator, to Ofcom and to the Operator / BT with which it has signed its Scheme Agreement(s).
- 13.7 Ofcom may from time to time propose other amendments to the Adjudication Scheme in consultation with the Parties. Parties to Scheme Agreements will have the option to agree to the amended Adjudication Scheme or to opt-out of the Adjudication Scheme by giving one months notice to the Adjudicator, to Ofcom and to the Operator / BT with which it has signed its Scheme Agreement(s).
- 13.8 Ofcom may from time to time amend the Terms of Reference after consultation with the Parties.
- 13.9 Any obligation incurred under a Ruling or Adjudication prior to the withdrawal by a Party from the Adjudication Scheme or the termination of the Adjudication Scheme will continue to apply to such Party.

13.10 In the case where a Party to a Dispute that is being resolved under the Dispute Resolution Rules terminates their Scheme Agreement (at the end of the required notice period) before any Ruling or Adjudication is made in relation to such Dispute, the Adjudicator will immediately discontinue handling such Dispute and shall leave the matter unresolved save in the case where there were more than two Parties to such dispute and a dispute between Parties to the Scheme Agreement still exists in which case the Adjudicator will continue to handle the Dispute in relation to those Parties remaining in the Adjudication Scheme.

13.11 The Adjudication Scheme will cease to exist if Ofcom gives notice to the Parties that it has terminated the contract with the Adjudicator and it has decided not to seek an alternative person to fulfil the role of Adjudicator. Paragraph 13.10 will apply in this case.

13.12 Where a Party to a Scheme Agreement which Party has also entered into an ANF Agreement terminates the Scheme Agreement, the dispute resolution rules shall revert back to those of the ANF Agreement.

14. Governing Law and Authorisation

14.1 The Scheme Agreement and the Adjudication Scheme will be governed under the Law of England and Wales and the Parties submit to the exclusive jurisdiction of the English courts.

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